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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of Discrimination
and Protection of Minorities
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Item 4 of the provisional agenda

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

The right to freedom of opinion and expression

Final report prepared by Mr. Danilo Türk and
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Conclusions and Recommendations

I. CONCLUSIONS

1. The Rapporteurs have decided to address an issue on which there has been little discussion so far and is posed by the main international human rights instruments. One is in fact aware that these instruments specify:

(a) On the one hand, that there are certain rights from which no derogation may be made in any circumstances whatever, including under a proclaimed state of emergency; this is tantamount to saying that there can be derogations from the other rights;

(b) On the other hand, that restrictions may be imposed on certain of the fundamental freedoms guaranteed by these instruments even when there is no emergency.

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2. If these restrictions are to be admissible in a democratic society, two conditions must be met:

(a) They must be provided for by law;

(b) They must be necessary:

(i) For respect of the rights or reputations of others;

(ii) For the protection of national security, public order, public health or morals.

3. This is the case in respect of articles 18 and 19 of the International Covenant on Civil and Political Rights. In the light of the debates on this point to which the preliminary report (E/CN.4/Sub.2/1990/11) and the updated report (E/CN.4/Sub.2/1991/9) gave rise, the Rapporteurs consider, at the time of concluding their final report, that they have done useful work. This report endeavours above all to be an instrument for analysis, whose purpose is to help to assess the extent to which the standards concerning freedom of opinion and expression are respected when decisions are taken in this area.

4. Four kinds of situations in particular are involved:

(a) The information brought to the attention of the Rapporteurs regarding criminal convictions - even persecution - frequently incurred by journalists, shows that, in most instances, they are charged with having infringed provisions of internal law which, upon verification, almost invariably turn out to be restrictions that are inadmissible in a democratic society. From that point of view, this report can be used by journalists and other professionals in the field of information, as an instrument for the defence of their rights.

(b) The present period shows that many Governments which come to power as part of a democratization process are confronted with these forms of restrictions, constituted for example by the possible closure of former press organs or the replacement of their staff by teams that have a non-totalitarian concept of information. How far are such restrictions admissible?

(c) The rise of xenophobia and racism, and even of revisionist or neo-Nazi ideas, especially in those countries which nevertheless consider themselves to be among the most democratic, is causing the Governments in question to take measures, including legislative measures to restrict, and even prohibit, with criminal sanctions, if necessary, the dissemination of such ideas. There again it is therefore important to ensure that the cure - in other words, the admissible restrictions - is not worse than the evil it is designed to remedy.

(d) Following cases of serious manipulation of international opinion, for example in Timisoara during the events in Romania or during the Gulf War, some information media organizations are examining their professional code of ethics: such an exercise would have to face up to the potential dangers contained in the theory of admissible restrictions, if only to guard more effectively against them, by limiting them.

5. Restrictions must be interpreted and applied restrictively. In particular they must be in conformity with the principles of legitimacy, legality, proportionality and democratic necessity.

II. RECOMMENDATIONS

6. The following proposals are submitted by the Rapporteurs to the Sub-Commission for its views, and for transmission to the Commission on Human Rights for its consideration and for appropriate decision, if necessary.

A. Regarding standard-setting

In consultation with professional circles in the information media, including the specialized non-governmental organizations, there should be a discussion of the conditions under which the Sub-Commission could take the initiative of drawing up specific safeguard standards, especially with a view to lessening the possible risks to democracy of the theory of the so-called "admissible" restrictions. At the same time, the desirability of identifying those elements that constitute the "hard core" of the freedom of opinion, expression and information which in no circumstances might give rise to restrictions or derogations could be studied.

B. Regarding protective measures

The many irregular sanctions on serious persecution to which the journalists are too frequently subjected might justify the introduction of a special procedure to assure the protection of professionals in the field of information. Such a procedure could take the form of the appointment of a special rapporteur or a working group of the Commission on Human Rights or, alternatively, a request to the Secretary-General to prepare periodic reports on questions concerning the protection of professionals in the field of information. The appointment of a special rapporteur would seem the most appropriate option. It is important that such a procedure involve cooperation with writers, editors, printers and other professionals in the field of information and that it be carried out with the necessary attention being given to, and coordination with, UNESCO and other specialized agencies and relevant United Nations organs. This initiative should be distinguished from those relating to the status of journalists who are on "dangerous assignments", which is another issue.